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MY PERSPECTIVE

- Assistant Appellate Defender, 2003-08
- Staff Attorney, North Carolina Court of Appeals, 2008-15
- Current GAL Appellate Counsel





North Carolina
GUARDIAN AD LITEM
A CHILD'S ADVOCADE IN COURT

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Why the Rules/Process Changes?

 In 2017, the General Assembly amended N.C. Gen. Stat. 7B-1001 to redirect appeals from TPR cases to go directly to the North Carolina Supreme Court, rather than first going through the Court of Appeals (as well as orders that eliminate reunification from the PP along with the TPR appeal when properly preserved).







When You Come To a Fork in the Road...

 In 2017, the GA also changed N.C. Gen. Stat. 78-1001(a)(5), so that a parent can appeal to
the COA an order eliminating reunification if a TPR petition or motion has not been filed
within 65 days. Formerly, it was 180 days. Some appeals from orders that CRE will go to the COA and others will go to the SC.







2019 Appellate Rules Changes

- As a result of the 2017 legislative change, the Supreme Court adopted changes to the appellate rules to accommodate their new case load in December 2018. Changes were effective 1 January 2019.
- This includes changes to Rules 3, 3.1, 4, 9, 11-13, 18, 26, 28, 30, 37, and 41, and adding Rule 42.
- For the most current version of the Rules, use the internet, not the printed books!
 - $\underline{\text{https://www.nccourts.gov/courts/supreme-court/court-rules/north-carolina-rules-of-supreme-court/court-rules/north-carolina-rules-of-supreme-court/court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules/north-carolina-rules-of-supreme-court-rules-rules-of-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-supreme-court-rules-rules-supreme-court-rules-rules-supreme-court-rules-supreme-court-rules-supreme-court-rules-supreme-court-rul$ appellate-procedure



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2019 Changes to Rule 3.1 Deadlines

- Transcript is due within 40 days of the assignment of the transcriptionist (formerly 35 days in indigent cases; 45 non-indigent).
- Proposed Record on Appeal must be served by appellant within 15 days of the delivery of the transcript (formerly 10 days).
- Record filed within 5 days of settlement.
- Appellants' brief now due within 30 days of filing of settled ROA (formerly within 30 days of mailing of printed record). Appellee's brief is still due 30 days after appellant's.







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|--|--|----------------|--|---|
| Day 60: | An appealable order is extend, meaning the order is cigned by the told judge and find with the circle. Appealable orders include orders terminating parental eights, adjusts atten and dispositions orders, and any order changing cartridy. | Day on. | An appendible celler is entened, messing the order is signed by the still judge and filed with the clock, and served. Appendible orders include orders terminating persent of eight, adjustication and disposition tellers, and any order changing-vertedly. TPK appeals over go disordy to the Supreme Court. Other appeals still go to the Court of Appeals. | |
| Day 30 | Notice of Appeal (NCA) must be filed within 30 days of ontry and services of the online. NCA must also be signed by both the appellant (senally a parent) and the attentny, if represented by connect. | Day 30 | Notice of Appeal (NOA) must be filed within 10 days of entry and service of the order. NOA must also be signed by both the appellant (usually a purent) and the appellant's attentey, if supercented by control. | |
| Day 30 | Within 1 business day of NOA, the clock antifers the AOC court reporting coordinator of the appeal. | Day 31 | Within 1 business day of the NOA, the clock of superior court must complete the Expedited Sevenile Appeals Form. | |
| Elay 33 | Within 2 business days, AOC count reporting coordinates unsigns a transaciptionist. For indigent appellints, the transacipt is due from the transaciptionist in 15 days. For unevenlagent appellants, it is 65 days. Aemolitate counties in automatife the transmits. GAL and 1555. | Day 36 | Within 5 business days of completion of the form, the ADC count reporting coordinates assigned a transcriptionies. The transcript is due within 60 days of the assignment, regardless of appellant's indigent status. | |
| | | Day % | Transcript due to be delivered to all parties. | |
| Day 78 | Within 10 business days of receipt of the transcript, the appellant must serve the proposed second on appeal (PROA) on the appellant. | (Bay 91 | Within 15 business days of except of the transcript, appellant ment serve the proposed second on appeal (PROA) on appellant. | |
| Etay 50 | Within 10 days of service of the PROA, appelles serves approval, objections/manufactors, or a proposed abstractive to PROA. If it is approved, these copies of the settled ROA are filed with the Coast of Appeals (COA). | | Within 10 days of survice of the PROA, appellee survex apparently, objections/summalments, or a proposed alternative to PROA. Appellant most file the record with the appellant count within 5 days of artifectures. If the appellee survex objections or amendments, see N.C.R. App. P. Edit 15(4). | |
| Buy 118 | Within Holips after the ROA is filed with the COA, appellant files a brief with the COA and serves it on appellant. | Day 156 | Within 30 days after the ROA is filed with the appellane court, appellant files a beinf and serves it on appellane. | |
| Duy 148 | Within 30 days of cortice of the appullant's bins (appellar files brief with the COA, and serves other parties. | Duy 166 | Within 10 days of service of appelluse's beint, appellus files beint with the appellute court and serves all other parties. | |
| Day ? | The case is calculated with priority to be decided based on the briefs only pointest end argument). A dealt opinion will be purposed by Staff Connect and Servateds to the panel of these judges assigned to hear the cases. | Day? | Consently, Rain 3.1 cases are calendared to be decided bound on the briefs, only (without oral argument). The Supreme Court will likely have oral argument in some 3.1 cases. | - |
| Day ? | The COA issues its opinion. The standard issues 20 days after the written opinion is filed. | to Day 2 | The appellate coast issues its opinion. The mandate issues 20 days after the mixture opinion is filled. | |
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Changes to the Rule 3.1 Process

- Disagreements over the PROA are now settled per Rule 11(c). (Rule 3.1 formerly had its own process.)
 - Appellees still have 10 days to serve objections, amendments, or an alternative proposed record.
 - If they can't agree, appellant is now responsible for submitting a "Rule 11(c) Supplement to the Printed Record on Appeal." (Formerly the appellee's responsibility to file them.)
 - There is also the possibility of judicial settlement if the parties can't agree about the provenance of proposed additions to the ROA.
- Word counts apply to 3.1 briefs filed in both appellate court. (Formerly no word limit in Supreme Court briefs.)



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Process Changes: No "Priority" in New Rule 3.1

- The prior version of Rule 3.1 explicitly provided that Rule 3.1 cases would be "given priority" over other appeals at the COA. That official priority no longer exists.
 - Extensions of time still disfavored.







Confidentiality: Rule 42

- Items filed in appellate courts in 78-1001 appeals are automatically sealed. Items sealed in the trial courts are also automatically sealed.
- Must use initials or pseudonym instead of a minor's name, as stipulated in the record on appeal.
- All sealed documents must display at the top of the first page: UNDER SEAL AND SUBJECT TO PUBLIC INSPECTION ONLY BY ORDER OF A COURT OF THE APPELLATE DIVISION.



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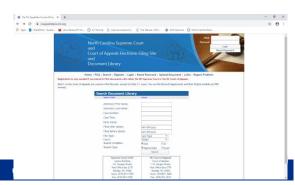
Mandatory(!) E-Filing

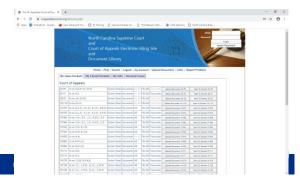
- Rule 3.1(i): "Unless granted an exception for good cause, counsel must file all documents electronically." (Formerly just for briefs and optional.)
- Electronic filing website: https://www.ncappellatecourts.org/
- Register with your email address
- Convert/scan documents into PDFs for filing



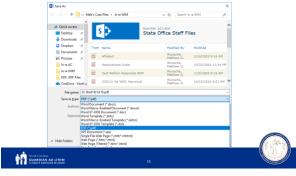
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SUPREME COURT'S REVIEW PROCESS

Supreme Court Review

- The SC hears everything (including TPRs) en banc (meaning all seven justices hear every case).
- The Supreme Court decides everything in conference. Conferences are generally held every four to six weeks. The SC files opinions after conferences.
- weeks. The SC files opinions after conferences, to Once briefs are filed, the Superner Court will begin to track them internally and each case will be assigned to a justice. That justice will decide whether to submit the case to the next court conference. There are internal circulation deadlines for every case, but no "30-by Rule". Authoring justice circulates draft opinions to all six other justices for comment.

COA Review

- The COA has 15 judges and hears everything (pretty much) in random panels of three.
- Individual panels hear cases. The COA files opinions the first and third Tuesday of every month.
- COA cases are assigned to a panel, and then a judge. The senior judge on the panel generally assigns the case to the authoring judge. The judge will draft an opinion and circulate to the rest of the panel.
- The COA's "30-day" rule means that the panel is supposed to file its opinion within 30 days of the calendar date.



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SUPREME COURT TPR REVIEW: **ORAL ARGUMENT**

- No firm policy commitment from the Supreme Court on oral argument in TPR cases, but not every case will be orally argued to avoid unnecessary delay.
 - The justice to whom the case is assigned will review the case and make an initial recommendation to the next conference whether to have argument. The entire Court will vote.
 - No quota of cases to orally argue.
 - Appellants can request argument on the Appeal Information Statement. Other parties can file a motion.
 - Bottom line is "similar" to PDR is this case "important" enough to warrant oral argument? Issues of first impression, confusion as to the existing law, issue repeatedly comes up despite cases on point.
 - Don't use children's names in oral argument!



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SUPREME COURT REVIEW: PUBLISHED OPS

- In non-orally argued cases, the assigned justice will circulate an opinion. The rest of the Court will review and comment, re-circulate, and then decide whether to join, concur, or
- All opinions will be published, meaning they are controlling case law from our state's highest court. Our published TPR case law is going to explode!







Helpful Training Link

- The Supreme Court held a training on 20 March 2019. Justices Hudson and Ervin presented about the Rules and administrative changes. You can find the training here:
 - https://www.nccourts.gov/about/nc-administrative-office-of-thecourts/training/training-library#tpr-appeals-in-the-supreme-court-7977



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